

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

EVANSTON INSURANCE COMPANY,

Plaintiff,

v.

Case No: 02:10-cv-00312

HARBOR WALK DEVELOPMENT, LLC.;
THE PORTER-BLAINE CORP.;
GENESIS GROUP, INC.;
WERMERS DEVELOPMENT, INC.;
CLARK-WHITEHILL ENTERPRISES, INC.;
VENTURE SUPPLY, INC.; TOBIN TRADING,
INC.; TRADERSCOVE CORP d/b/a
THE HENIN GROUP; PREMIER
INTERNATIONAL REALTY, INC., d/b/a HENIN
REALTY; INTERNATIONAL PROPERTY
INVESTMENTS OF CENTRAL FLORIDA,
INC., d/b/a HENIN INTERNATIONAL
SERVICES; HIGGERSON-BUCHANAN, INC.;
M&M CONTRACTING; P&P SKILLED
CONTRACTORS; WORK COMPANY,
DRYWALL & PLASTER; JEROME HENIN,
individually; DAVID DANIELS, individually;
and MICHELLE GERMANO; DENNIS
JACKSON; SHARON JACKSON;
JASON DUNAWAY; LISA DUNAWAY;
individually and on behalf of all others
similarly situated,

Defendants.

EVANSTON INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Evanston Insurance Company ("Evanston"), by and through undersigned counsel and pursuant to Federal Rule of Civil Procedure 56 and Local Rule for the Eastern District of Virginia 56(A), hereby moves for summary judgment on the basis that there is no genuine issue of

material fact and Evanston is entitled to summary judgment as a matter of law.

1. Evanston issued three Commercial General Liability policies to Defendant Harbor Walk Development, LLC. (“Harbor Walk”). These policies will be referred to collectively as “Evanston Policies.”

2. Evanston Policy Number 03GLP1006568 was in effect for the period between February 10, 2003 and February 10, 2004 and was extended via endorsement to February 1, 2005. *See Exhibit D to Evanston’s Complaint for Declaratory Relief* (DE #1).

3. Evanston Policy Number 05GLP1007502 was in effect for the period between February 10, 2005 and February 10, 2006. *See Exhibit E to Evanston’s Complaint for Declaratory Relief* (DE #1).

4. Evanston Policy Number 06GLP1007502 was issued for the policy period between February 10, 2006 and February 10, 2009 but was canceled on October 8, 2007. *See Exhibit F to Evanston’s Complaint for Declaratory Relief* (DE #1).

5. Harbor Walk is a defendant in three lawsuits for which Harbor Walk seeks a defense and indemnity under the Evanston Policies. *See Exhibits A, B and C to Evanston’s Complaint for Declaratory Relief* (DE #1). The lawsuits will be collectively referred to as “underlying lawsuits.”

6. The underlying lawsuits allege that Harbor Walk is a Builder/Developer of several homes which were constructed with drywall which is inherently defective because it emits various sulfide gasses and/or other toxic chemicals (“off-gassing”) which allegedly create noxious odors and cause damage and corrosion to the structural, mechanical and plumbing systems of the homes and are capable of causing personal injuries. *See Evanston’s Complaint for Declaratory Relief* (DE #1) at Exhibit A, ¶¶ 21-23; Exhibit B, ¶¶ 13-14; and Exhibit C ¶¶ 3-4.

7. The Evanston Policies only provide coverage for “bodily injury” and/or “property damage” which occurs during the policy periods.

8. Dennis and Sharon Jackson allege they closed on the purchase of their home on or about October 24, 2008 after first entering the home on or about August 29, 2008. *See Exhibit C, ¶¶36 and 39, to Evanston’s Complaint for Declaratory Relief* (DE #1).

9. The alleged “bodily injury” and/or “property damage,” if any, actually suffered by Dennis and Sharon Jackson did not occur until after the expiration of all of the Evanston Policies and therefore, Evanston has no duty to defend or indemnify Harbor Walk for any of the Jackson’s claims.

10. The Evanston Policies’ General Change Endorsements and Limitation of Coverage to Designated Premises or Projects Endorsements limit the coverage provided by them to only those premises or projects listed in the endorsements. *See Exhibits D, E and F to Evanston’s Complaint for Declaratory Relief* (DE #1).

11. Jason and Lisa Dunaway own a home they built themselves which is located at 2707 Flaggy Run Rd., Courtland, Virginia 23837. *See Exhibit A, ¶¶7-8, to Evanston’s Complaint for Declaratory Relief* (DE #1).

12. Harbor Walk did not build the Dunaway home and the Dunaway address is not included within the covered premises or projects in the Evanston Policies and therefore, Evanston has no duty to defend or indemnify Harbor Walk for any of the Dunaways’ claims.

13. To the extent any of the allegations constitute “bodily injury” or “property damage” as defined by the Evanston Policies, coverage for any such “bodily injury” or “property damage” is excluded by the Evanston Policies’ pollution exclusions.

14. There exists no genuine issue as to any material fact related to whether Harbor Walk

is entitled to coverage under the Evanston Policies for the claims asserted against it in the underlying lawsuits brought by Michelle Germano, Dennis and Sharon Jackson and Jason and Lisa Dunaway.

15. As a matter of law, Evanston has no duty to defend or indemnify Harbor Walk against any claim asserted in the underlying lawsuits.

WHEREFORE, as there are no disputed issues of fact and judgment as a matter of law is appropriate, Evanston respectfully requests this court enter Final Summary Judgment in its favor, declaring and adjudicating that EVANSTON has no duty to defend or indemnify Harbor Walk Development, LLC with respect to the claims asserted in the underlying lawsuits brought by Michelle Germano, Dennis and Sharon Jackson and Jason and Lisa Dunaway and awarding Evanston its costs and such further relief as the Court may deem just and proper.

EVANSTON INSURANCE COMPANY

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2011, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such electronic filing (NEF) to the following:

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